

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOEY OAXACA MARTINEZ,

Plaintiff,

v.
CHUCK ALLEN, et al.,

Defendant.

Case No. 3:16-cv-00034-MMD-WGC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) ("R&R" or "Recommendation") relating to Plaintiff's application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1. Plaintiff had until March 26, 2016, to object to the R&R. To date, no objection has been filed.¹

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a

¹Plaintiff has failed to provide the Court with his current mailing address; the R&R that was sent to Plaintiff was returned as undeliverable. (ECF No.4.)

1 magistrate judge's report and recommendation where no objections have been filed. See
2 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
3 of review employed by the district court when reviewing a report and recommendation to
4 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
5 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
6 view that district courts are not required to review "any issue that is not the subject of an
7 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
8 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
9 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
10 which no objection was filed).

11 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
12 determine whether to adopt Magistrate Judge Cobb's R&R. The Magistrate Judge
13 recommends granting Plaintiff's application to proceed in forma pauperis and dismissing
14 the action without prejudice. Upon reviewing the R&R and complaint, this Court finds
15 good cause to adopt the Magistrate Judge's Recommendation in full.

16 It is therefore ordered, adjudged and decreed that the Report and
17 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) is accepted and
18 adopted in its entirety.

19 It is ordered that Plaintiff's application to proceed in forma pauperis (ECF No. 1) is
20 granted; however, pursuant to 28 U.S.C. § 1915(b), he is still required to pay the full
21 amount of the filing fee over time. Within thirty (30) days of the date of this order, Plaintiff
22 is required to pay an initial partial filing fee of \$6.67. Thereafter, Plaintiff is required to
23 make monthly payments of twenty percent (20%) of the preceding months' income
24 credited to his account to be forwarded by the agency having custody over Plaintiff to the
25 Clerk of this Court each time the amount in Plaintiff's account exceeds \$10 until the filing
26 fee is paid.

27 It is further ordered that the Clerk file the complaint (ECF No. 1).

28 It is further ordered that this action is dismissed without prejudice.

1 The Clerk is instructed to close this case.
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4 DATED THIS 5th day of May 2016.
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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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